Supreme Court of the United States

October Term, 1960.

No.

GLOBAL SEAMEN'S UNION

NATIONAL MARITIME UNION OF AMERICA SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291 INTERNATIONAL MARITIME WORKERS UNION STEVE CARDULLO JAMES T MOUCK RICHARD ASKEW LOUIS RAMISE SHANNON I WAI

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1960.

No.

GLOBAL SEAMEN'S UNION,

Petitioner,

v.

NATIONAL MARITIME UNION OF AMERICA, SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, INTERNATIONAL MARITIME WORKERS' UNION, STEVE CARDULLO, JAMES T. MOOCK, RICHARD ASKEW, LOUIS PARISE, SHANNON J. WALL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

The petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the above case on December 15, 1960.

OPINIONS BELOW.

The opinion of the Supreme Court of Pennsylvania is reported at 402 Pa. 325, 166 A. 2d 625. The opinion of the Court of Common Pleas No. 1 of Philadelphia County is not reported. A copy of the opinions appears in the Appendix.

JURISDICTION.

The petitioner, with the consent of the Court of Common Pleas, filed a complaint as an intervenor to enjoin alleged unlawful conduct of the respondents and to obtain damages. The Supreme Court of Pennsylvania by opinion, dated and filed December 15, 1960, with two Justices dissenting, affirmed the lower court and dismissed the complaint on the ground that the exclusive primary jurisdiction of the dispute was in the National Labor Relations Board.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3) in that a right or privilege was claimed, and allowed, under a statute of the United States to bar the state action.

QUESTION PRESENTED.

Does federal law compel a state court to refrain from exercising its traditional power to enjoin, or award damages for, a local interference with contractual relations, where the relations arose outside the United States between a foreign registered labor union and a foreign corporate shipowner, indirectly owned by Americans, and the union was acting for the foreign crew of a vessel which flies a foreign flag in the course of its international trade?

STATUTE INVOLVED.

The statutory provisions involved are Sections 7 and 8(b) of the subchapter, National Labor Relations Act, of the Labor Management Relations Act, 1947, as amended, 61 Stat. 136, 29 U. S. C. §§ 157, 158(b). The provisions appear in the Appendix.

STATEMENT OF THE CASE.

The petitioner was granted leave to intervene in suits brought by the owner and the charterer of a foreign vessel. Its complaint, filed on November 4, 1960, alleged that it was a labor union for the crew of the vessel, that it was duly registered as such under the laws of the Cayman Islands of the British West Indies, and that its agreement with the owners and operators of the ship was in full force and effect. It also alleged that the respondents picketed and interfered with the operations of the ship in Philadelphia in the course of its customary activity of hauling iron ore from Venezuela to other parts of the world and that the purpose of the picketing and interference by the respondents was to cause the owner and operator of the vessel to disavow the existing contract with the petitioner and to disrupt the relations existing between the petitioner and the crew members.

The matter came before the trial court on a motion for a preliminary injunction. After hearing testimony, the court denied the preliminary injunction. The Supreme Court of Pennsylvania, after appeal and argument, affirmed the denial of the injunction and dismissed the complaint. Two Justices dissented.

THE FEDERAL QUESTION.

The federal question was raised by the respondents by paragraph 1 of the Preliminary Objections and a Motion for Dismissal filed by them (R. 55a):

> "1. The complaint alleges conduct which, if true may be violative of the Labor Management Relations Act of 1947, 29 U. S. C. A. 158(b)(4), and, therefore, exclusive jurisdiction to adjudicate such claim lies with the National Labor Relations Board, 29 U. S. C. 160."

The trial court sustained the claim under the federal statute by its third and fourth Conclusions of Law (R. 510a):

"3. Exclusive jurisdiction of the subject matter of the dispute is vested in the National Labor Relations Board.

"4. This Court has no jurisdiction to consider the merits of the controversy."

The majority opinion of the Supreme Court of Pennsylvania decided the federal question by concluding (Appendix 43):

"In our opinion, exclusive primary jurisdiction of the dispute involved in these appeals is in the National Labor Relations Board.

"The orders of the court below, denying the plaintiffs' respective motions for preliminary injunctions in the several suits, are affirmed and the complaints dismissed at the appellants' costs."

REASONS FOR GRANTING THE WRIT.

1. The Case Presents an Important Question of Federal Law Which Should Be Determined by This Court.

Recent events emphasize the importance of the rule of law in public and private international law. No nation should close its eyes to the significance of foreign private relations, and to fair play in the protection of such relations. Tangential interests or even greater interests of the citizens of one state or nation must be weighed against the interests of citizens of other nations. Comity, selfish in its origin, calls for recognition of such foreign interest in terms of reciprocity, expediency, stability or convenience. The modern rule of law altruisticly calls for the recognition of foreign interests which outweigh local interests simply because it is right and fair. Accordingly, it is appropriate to examine at the outset the nature of the interests of the petitioner as a foreign union with a foreign bargaining contract made on behalf of a foreign crew.

The petitioner is seeking local relief in its capacity as a foreign labor union. The trial court specifically affirmed the following finding (R. 503a, R. 398a):

> "1. That the Global Seamen's Union is an unincorporated association and foreign labor union duly registered under the Trade Union Law, Law 3 of 1942 of the Cayman Islands, British West Indies."

The headquarters of the union are located on the Cayman Islands (R. 222a). These are three islands, under the British crown, which are located south of Cuba (R. 99a). The officers of the union are Caymanians (R. 222a).

The union executed a collective bargaining agreement on August 29, 1959 for the unlicensed members of the crew as well as for the licensed members. Each agreement contained a certification by the Registrar of Trade Unions of

the Cayman Islands that a great majority of the employes had designated the petitioner as their labor representative (R. 22a, R. 31a).

The bargaining agreements were with Universe Tankships, Inc. which is a Liberian corporation with its principal office in Bermuda (R. 14a, R. 24a). The owner of all its shares is a Panamanian corporation which in turn is owned by two Americans. The vessel was under charter to Navios Corporation, a Liberian corporation with headquarters in Nassau where it had 80 to 90 employes (R. 139a). Its shares were owned by another Liberian corporation, the shares of which in turn were owned by an American corporation.

The "main bulk" of the crew of forty-eight consists of British citizens from the Cayman Islands (R. 99a). The great majority of the crew were actually recruited in the Cayman Islands (R. 103a). The crew was serving under Articles opened on January 16, 1960 at Port of Spain, Trinidad (R. 101a). The Articles incorporated by reference the labor union agreements and provided that the governing law was to be the law of Liberia (R. 523a).

Although the facts show that this case involves a foreign labor union, a foreign crew, a foreign labor contract, a foreign employer and a vessel carrying a foreign flag in international commerce, the petitioner desires to emphasize its interest which springs from its representation of the foreign crew for whom it was acting. It negotiated a contract which gave the crew their employment on the vessel and the diverse rights appearing in the contracts. The acceptable terms of the employment were related to the economy of the Cayman Islands from which the great majority of the crew came.

World-wide open competition for labor enables many peoples to maintain the basic necessities of life. Nations may well assert a legislative policy to create artificial barriers within their borders in order to protect local labor. It does not behoove a court, because of the alleged interest of local labor, to make determinations which amount to

judicial legislation in denying relief to extraterritorial engagements with respect to international trade.

The existence of a traditional local remedy for local conduct which is violative of foreign private relations should not be denied by any civilized nation. This case presents, internally, the important federal-state relations question whether the remedy should exist under state law or federal law. Has Congress entered the field as to the enforcement of foreign labor relations rights so that federal law rather than state law governs if there is a claim of some local contacts? It would seem that Congress has not entered this field exclusively any more than it has entered the field of the remedy to be given for the enforcement of judgments of foreign nations. Whether Congress should enter the field is not for this Court to say but this Court does have the very important function of determining whether Congress has preempted the field.

The international importance of the question cannot be overemphasized. Is the federal statutory scheme for the administrative handling of internal labor relations to be extended to labor relations which have their substantial contacts in foreign nations? Were the substantive and procedural aspects of the federal labor relations law of this country drafted with the view of their applicability to foreign labor relations because of some minimal contacts in this country? Persons in foreign lands are in a position of jeopardy if a law not drafted with a view to its applicability to a foreign situation is administratively or judicially declared to be applicable to them. Note, for example, the protection given under Section 8(b)(4)(C) of the National Labor Relations Act subchapter, to a labor union certified under American law, 29 U. S. C. § 185. It would seem unreasonable to conclude that Congress meant that American unions were to be protected but no law, state or federal, was to protect foreign unions duly certified under the law of a foreign nation. This Court should not permit the way to be left open for foreign nations or their citizens to say that

America stands ready to protect from local injury American labor unions but not labor unions of another country. The conclusion seems inescapable that Congress was not discriminating against foreign unions. It simply was that foreign unions were outside "the scope of the discourse".

Under accepted principles of conflict of laws a remedy should not be denied because foreign facts are involved. Traditionally, a common law remedy exists for inducing breach of contract, Sayre, *Inducing Breach of Contract* (1923) 36 Harv. L. Rev. 663; or for interfering with contract relations, Carpenter, *Interference With Contract Relations* (1928) 41 Harv. L. Rev. 728. Pennsylvania is in accord with the general rule as is seen in *Erdman v. Mitchell,* 207 Pa. 79 (1903) which involved a suit by one union against another union.

The instant case presents squarely the important question of whether a traditional state remedy is to be denied or limited with respect to the protection of foreign contract relations. If foreign labor relations are to be molded into American concepts and are to be made subject to American limitations, there comes the strong probability of retortion and the attempt of foreign courts to disregard significant aspects of American labor relations. This Court has already acknowledged the danger, *Lauritzen v. Larsen,* 345 U. S. 571, 582 (1952): ("But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction . . ."); *Romero v. International Term. Operat. Co.,* 358 U. S. 354, 383 (1959): ("The controlling considerations are the interacting interests of the United States and of foreign countries, and in assessing them we must move with the circumspection appropriate when this Court is adjudicating issues in-

evitably entangled in the conduct of our international relations.")

The withholding of a state remedy in this case because of the alleged possible jurisdiction of an administrative agency imposes federal law on a foreign private relation where there is a minimum of American contacts. The Supreme Court of Pennsylvania made reference to the indirect American ownership. The interests in foreign ships of American shareholders, once or twice removed, would be material if the issue were a matter of regulation of investment or of ownership, or if the question involved a ruse to avoid regulation. Ownership, direct or indirect, is only one of many factors to be used in determining the applicability of a labor relations law to a case involving foreign elements. It also is not significant that the vessel made regular visits to ports in the United States.[1] That, after all, is a normal incident of international trade. These two factors plus the very minimal other factors, relating to the charter contract with which the union has no real interest, would seem to be overwhelmingly outweighed by the host of factors showing that the real issue centers about the relations of a labor union, a crew, an employer and a ship, all of which are admittedly foreign.

Aside from the federal-state and the international problems, the issue in this case has additional important aspects. It affects many persons and vast economic interests. This litigation directly involves a crew of forty-eight and one vessel. It takes no imagination to envision the broad personal and economic aspects of the many situations with other foreign ships.

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1. The record shows that the vessel in its present activity normally spent twenty hours in the United States, thirty hours in Venezuela and five and a half days on the high seas (R. 118a-120a).

2. The State Court Has Decided the Federal Question in a Way Probably Not in Accord With Applicable Decisions of This Court.

The majority decision of the Supreme Court of Pennsylvania that it must dismiss the case because primary exclusive jurisdiction is in the National Labor Relations Board, appears to be inconsistent with one decision of this Court and an unwarranted extension of two other decisions of this Court.

This Court in *Benz v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138, 143-144 (1957) upheld the use of Oregon law in an international commerce controversy on the ground that federal law was not fashioned to deal with relations between foreigners operating ships under foreign laws:

> "Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws. The whole background of the Act is concerned with industrial strife between American employers and employees."

The factual distinctions made by the Supreme Court of Pennsylvania were that the ultimate share ownership of the foreign corporations owning and chartering the vessel was in American hands and that the charter agreement had some American references. The distinctions are not material since the petitioner is a foreign labor union and its relations with the foreign crew and the foreign ship had naught to do with the shareholders of the corporations, once or twice removed, nor with the relations between the corporations.

There is the further factual distinction that in *Benz* the foreign crew had started the picketing which was later taken up by a local union. This is not material on the basic issue of whether the picketing is or is not an interference with the contractual relations as they exist between the union and the employer. Although it has been said that

the labor relations of crew and ship are a matter of the internal management of the vessel, Restatement, Foreign Relations Law of the United States (Tent. Draft No. 2 1958), § 34 p. 103, there is no need for any such tag to limit the issue. A union contract dealing with labor relations aboard a vessel is a relatively modern development and hence there had been no need for the old cases to have spoken specifically of that as a matter of internal management of a vessel. Even more important, labeling is unnecessary because the basic question is whose interest is greater in those relations, a transitorial port, or the place which has the most significant contact with the relations. Picketing to induce an employer or employes to disregard an existing bargaining agreement is inextricably linked with the labor relations aboard the ship.

It is acknowledged that there are sufficient local contacts in conjunction with picketing to justify the assertion of legislative jurisdiction, Restatement, Conflict of Laws § 43e (Tent. Draft No. 3 1956). The lack of the requisite specificity in the existing federal law, however, leads to the conclusion that the *Benz* case is not to be construed to bring the instant issue within the jurisdictional reach of the substantive provisions of the federal legislation.

The unwarranted extension of two decisions of this Court appears also to have misled the Supreme Court of Pennsylvania. It relied on *Marine Cooks & Stewards, A. F. L. v. Panama Steamship Co., Ltd.*, 362 U. S. 365 (1960), a case which simply held that Congress by the Norris-LaGuardia Act had taken federal courts out of the business of issuing injunctions against labor unions (372):

> "There is not presented to us here, and we do not decide, whether the picketing of petitioner was tortious under state or federal law. All we decide is that the Norris-LaGuardia Act deprives the United States court of jurisdiction to issue the injunction it did under the circumstances shown."

The case, accordingly, has nothing to do with the prohibition of state remedies, nor is there any justification for such an extension.

The other decision of this Court which was unwarrantedly extended is *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959). It deals with a local situation with no foreign elements. Yet, the Pennsylvania court extended to this case, with all its foreign elements, the conclusion that Congress, by legislation dealing with American labor relations, wanted preliminary administrative determinations as to the applicability of the Act to foreign labor relations.

It is recognized that this Court has held that state power may be abrogated in regard to American labor relations, even though the complainant is not an employer within the terms of the Act, *Plumbers, etc. 298 v. County of Door*, 359 U. S. 354 (1959); *Local Union No. 25 v. New York, N. H. & H. R. Co.*, 350 U. S. 155 (1956). Those situations, however, are a far cry from this case where foreign labor relations are involved and this Court has held that federal law does not purport to deal with such relations.

The right of a complainant to go before the National Labor Relations Board even though the complainant is not normally within the scope of the Act, is a substantive provision relating to the control of labor relations. Such substantive regulation is appropriate as to American entities even though they are not normally within the provisions of the Act. Under the rule of the *Benz* case, such provisions are unrelated to foreign labor relations and hence would not limit the substantive rights which can be asserted under normal conflict of laws with respect to foreign labor relations. Likewise, the assertion of jurisdiction by the Labor Board over activities in the United States insofar as those activities may be specifically prohibited by federal law, as for example, a secondary boycott, does not affect the issue here involved. When Congress spelled out the secondary boycott as a violation it

was dealing with local conduct and allowed suit in any district court or in "any other court having jurisdiction", § 303(b) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. § 187. It was no preemption of the field of protecting against interference with foreign labor contracts.

The Labor Board in a divided opinion has recently assumed jurisdiction over the labor relations of a ship flying a foreign flag, *West India Fruit & S. S. Co., Inc.*, 130 N. L. R. B. No. 46, 29 Law Week 2383 (1961). Administrative agencies are not known to be prone to confine their jurisdiction. If there were a sufficiency of American contacts, it may well be that it has properly assumed jurisdiction. The bare claim of minimal American contacts, however, does not convert a case of foreign labor relations into a case of local labor relations.

The problem of the applicability of federal law to the foreign labor relations in this case is of a general nature and, hence, does not call for an administrative pin-pointing to fill in legislative interstices. Furthermore, the reason for the *Garmon* rule is not applicable in the field of foreign labor relations because the administrative body is not equipped with "specialized knowledge and cumulative experience" in determining matters of private or public international law. See *United States v. Western P. R. Co.*, 352 U. S. 59, 64 (1956) and, significantly, in the words of Mr. Justice Brandeis in *Great Northern Railway Co. v. Merchants Elevator Co.*, 259 U. S. 285, 294 (1922): "Here no fact, evidential or ultimate, is in controversy; and there is no occasion for the exercise of administrative discretion."

Furthermore, it should be noted that Congress has not purported to adopt or to follow to the hilt the doctrine of primary administrative jurisdiction in the labor relations field. Reference has already been made to § 303(b) of the Labor Management Relations Act of 1947. In addition, § 301(a), 29 U. S. C. § 185, expressly provides for judicial action, in contrast to administrative action, with respect

to suits for violation of contracts between an employer and union or between unions. It is noted that this Court in *Charles David Box Co., Inc. v. Courtney*, No. 641, granted certiorari on February 21, 1961, on the question of whether § 301(a) preempted the judicial remedy to the exclusive jurisdiction of federal courts.

CONCLUSION.

The dismissal of the complaint in the State court on the ground of an exclusive primary administrative jurisdiction in a federal agency presents an important federal question with grave international consequences. The question was decided in a way which is probably not in accord with applicable decisions of this Court. Accordingly, the petitioner respectfully submits that its petition for a writ of certiorari should be granted.

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March 6, 1961.

APPENDIX A.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT.

NAVIOS CORPORATION, *Appellant*, GLOBAL SEAMEN'S UNION, *Intervening Plaintiff, Appellant*, *v.* NATIONAL MARITIME UNION OF AMERICA, et al.	Nos. 147, 148, 155, 156 January Term, 1961 Navios Corporation—Appellant at No. 147. Universe Tankships, Inc., —Appellant at No. 148. Global Seamen's Union—Appellant at Nos. 155 and 156.
UNIVERSE TANKSHIPS, INC., *Appellant*, GLOBAL SEAMEN'S UNION, *Intervening Plaintiff, Appellant*, *v.* NATIONAL MARITIME UNION OF AMERICA, et al.	Appeals from Identic Orders of the Court of Common Pleas No. 1 of Philadelphia County at Nos. 2065 and 2068 September Term, 1960.

OPINION OF THE SUPREME COURT OF PENNSYLVANIA.

Filed: December 15, 1960.

JONES, *C. J.*

These appeals arise out of suits instituted by the plaintiffs seeking to enjoin the defendant unions and certain of their officers from picketing or in any other man-

ner interfering with the unloading and servicing, at the Port of Philadelphia, of a ship flying a Liberian "flag of convenience."

The matter first came before the court below on the plaintiffs' motions for a preliminary injunction. After a full hearing, the learned chancellor refused a preliminary injunction and contemporaneously entered decrees *nisi* dismissing the complaints, to which exceptions were subsequently filed and still remain undisposed of. Accordingly, final decrees have not been entered. The present appeals were promptly taken by the plaintiffs, pursuant to Section 15 of the Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, 43 P. S. §206o, from the court's refusal of a preliminary injunction; and upon application of counsel, we forthwith advanced the appeals for argument, as contemplated by the Act.

The fundamental basis for the chancellor's action in denying the plaintiffs injunctive relief is that exclusive jurisdiction of the subject matter of the dispute is vested in the National Labor Relations Board. Whether that is so, under the facts of the case, is the legal problem to which we shall now address ourselves.

The plaintiffs, Universe Tankships, Inc., and Navios Corporation, are respectively the owner and time charterer of a bulk cargo vessel, the SS Ore Monarch, which transports iron ore from Puerto Ordaz, Venezuela, to the Fairless Works of the United States Steel Corporation at Morrisville, Pennsylvania. Because of the limited depth of the Delaware River, above Philadelphia, which the vessel necessarily must ply in order to reach Morrisville, she unloads a portion of her cargo at Philadelphia to lessen her draft before attempting to proceed upstream for delivery of the balance of the cargo at Morrisville. The SS Ore Monarch arrived at Philadelphia on October 21, 1960, laden with a cargo of iron ore from Puerto Ordaz for the United States Steel Corporation at Morrisville and was berthed at Pier 122 South on the Delaware River at Philadelphia for the partial unloading operation above mentioned.

All of the SS Ore Monarch's crew of forty-eight men are, with three exceptions, aliens and all, except for the Captain and Chief Engineer, are members of the Global Seamen's Union, an unincorporated association registered in the Cayman Islands, British West Indies, with which organization Universe Tankships, Inc., the owner of the vessel, has an existing labor agreement.

On October 26, 1960, Universe Tankships, Inc., and Navios Corporation filed complaints in the Court of Common Pleas of Philadelphia County against the National Maritime Union of America, the Seafarers' International Union of North America, the International Maritime Workers' Union, the International Longshoremen's Association, Local 1291, and certain officers of these unions for a temporary and, thereafter, a permanent injunction restraining the defendants from causing the SS Ore Monarch to be picketed or in any way interfering with the operation, management, internal economy and affairs of the SS Ore Monarch or any vessel owned or chartered by the plaintiffs; or in any manner inducing others to refuse to service such vessels. The plaintiffs also demanded damages.

The complaints alleged, inter alia, that, at or about the time that the SS Ore Monarch berthed at Pier 122 South, the defendants caused two persons to picket in front of the entrance to the pier carrying signs bearing the legend, "AMERICAN MARITIME UNIONS PROTEST UNFAIR LABOR PRACTICES OF 'ORE MONARCH' ", and also caused a small boat carrying pickets with similar signs to cruise in the vicinity of the SS Ore Monarch, the picketing activity having continued up to the institution of the suits; that the defendants caused the pickets to prevent, or attempt to prevent, deliveries of supplies and victuals to the SS Ore Monarch by threats of force and intimidation to drivers of trucks undertaking to make such deliveries; that at approximately 8 P. M. on October 21, 1960, while the SS Ore Monarch was discharging her cargo, two agents of the International Longshoremen's Association, Local 1291, boarded the SS

Ore Monarch and ordered members of Local 1291, then working at the hatches of the ship, to cease working, the orders being promptly obeyed; that the unloading operations have not been resumed since that time; that the purpose of the above mentioned and similar actions of the defendants is to procure the breach of the labor agreement existing between Universe Tankships, Inc., and Global Seamen's Union, and to coerce Universe Tankships, Inc., to compel or require the members of its ship's crew to join the International Maritime Workers' Union; that the aforesaid actions of the defendants have prevented and are preventing the unloading, bunkering and victualling of the SS Ore Monarch, thereby causing the plaintiffs to suffer irreparable injury.

In the course of the hearings, the court granted Global Seamen's Union leave to intervene as a party plaintiff; and on November 4, 1960, the intervenor filed its separate complaint alleging substantially the same facts as the complaints filed by Universe Tankships, Inc., and Navios Corporation. Global's complaint asked, in addition, that the defendants be enjoined from inducing members of Global Seamen's Union from disavowing their relationship therewith and from compelling the employers of the SS Ore Monarch's crew to breach their contract with Global Seamen's Union and from entering into a contract with Universe Tankships, Inc., while the latter's contract with Global Seamen's Union endured. Otherwise, Global's complaint sought the same injunctive relief as was prayed for by Universe Tankships, Inc. Global did not, however, demand damages.

The facts adduced at the hearings in the court below further disclosed that the SS Ore Monarch was built in 1956 at Kure City, Japan, and was registered in New York on January 9, 1957, as a Liberian vessel, which, however, has never been to Liberia. Nor has the ship ever been registered by any other country or flown any other flag than that of Liberia.

Universe Tankships, Inc., is a Liberian corporation, wholly owned by Oceanic Tankships, S. A., a Panamanian corporation, which, in turn, is wholly owned by D. K. Ludwig and W. W. Wagner, both of whom are American citizens.

Navios Corporation is a Liberian corporation, wholly owned by Navigen Corporation, a Liberian corporation also, which, in turn, is wholly owned by the United States Steel Corporation, and is registered in the Bahama Islands with its home office in Nassau.

The Cayman Islands are a British possession located approximately 250 miles south of Cuba in the British West Indies. Their population is between six and seven thousand inhabitants.

Global Seamen's Union was registered in the Cayman Islands on June 1, 1959, under the provisions of Trade Union Law 3 of 1952. Apparently it is the only union that has ever been registered in the Cayman Islands. The registration took place when a man who said that he was the Secretary-Treasurer of the Global Seamen's Union submitted a list of officers of the Union and the signatures of 15 or 20 men whom he said were its members. No official investigation of the union was made prior to its being admitted to registration in the Cayman Islands, whose registrar of trade unions testified that company domination does not disqualify a union from registering in the Cayman Islands. There is no record of any activity on the part of the union prior to its registration.

The SS Ore Monarch's articles of agreement with the members of its crew require all such as are eligible to join the Global Seamen's Union within thirty days after signing the articles.

On January 5, 1960, the Secretary of Universe Tankships, Inc., sent to the Captain of the SS Ore Monarch a letter cautioning the members of the crew not to join any American unions and to abide by the contract between Global Seamen's Union and Universe Tankships, Inc. The

Captain was instructed to read the letter aloud to his unlicensed men at his first opportunity outside the territorial waters of the United States and, that, he did.

The time charter between Universe Tankships, Inc., and Navios Corporation is for a term of seven years, calculated from the time of the vessel's delivery at Puerto Ordaz, Venezuela, after having been released from the builder's yard in Japan. The charter provides that all differences or disputes with respect to performance and construction of the charter "shall be determined at the port of New York in accordance with the laws of the United States." Another clause of the charter provides that "All bills of lading, receipts or other shipping documents issued hereunder shall contain an appropriate Clause Paramount substantially in the following form: 'This bill of lading or contract of carriage shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States * * *'". Payments due under the charter are to be made in United States currency and the ship is to be redelivered, unless otherwise mutually agreed, "at the last port of discharge which shall be on the U. S. Atlantic or Gulf Coast."

No evidence was introduced that the picketing was otherwise than peaceful or that it was accompanied by any violence whatsoever. The chancellor's finding to such effect, amply supported as it is by the record, must be taken on these appeals as an established fact.

If, as the court below held, this case involves a labor dispute within the jurisdiction of the National Labor Relations Board, then the picketing and other activities of the defendants are either protected by Section 7 of the National Labor Relations Act of July 5, 1935, c. 372, 49 Stat. 449, as amended, 29 U. S. C. A. § 157, or constitute an unfair labor practice under the standards of Section 8(b) of the same statute.

In *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 245 (1959), the United States Supreme Court declared that, "When an activity is arguably subject to § 7

or § 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."

It seems abundantly plain that, on the rationale to be deduced from Supreme Court decisions in cognate relation, the activity of the defendants in the instant case is, at least, *arguably* subject to Sections 7 or 8 of the National Labor Relations Act, and, that, accordingly requires us to "defer to the exclusive competence of the National Labor Relation Board" over the subject matter.

The appellants argue, however, that the picketing and other activities of the defendants involve an interference with the internal economy of a foreign ship and its foreign workers within the restrictive scope of the decision in *Benz v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138 (1957). We think the two cases are clearly distinguishable on their material facts.

In the *Benz* case a Liberian ship berthed at Portland, Oregon, for repairs, the loading of a cargo of wheat and the completion of an insurance survey. The crew was composed entirely of nationals of countries other than the United States, principally Germany and Great Britain. The crew members had agreed to serve on a voyage originating at Bremen, Germany, for a period of two years, or until the vessel returned to a European port. They had signed on under a British form of articles of agreement which was opened at Bremen. The members of the crew went on strike, while at Portland, demanding that their term of service be reduced, their wages increased, and more favorable conditions of employment established. To voice their grievances, they picketed the vessel. Six days later they designated the Sailors' Union of the Pacific, an American union, as their collective bargaining representative. The striking crew, or others acting for them, continued the picketing for almost a month. The day after the crew withdrew its picket line, the Sailors' Union of the Pacific began picketing

the ship. It was enjoined by the United States District Court after the shipowner filed suit for an injunction and damages. Subsequently, two other American unions picketed the ship and, in turn, were enjoined by the court.

At the trial of the *Benz* case, the District Court found, as stated in the opinion for the Supreme Court at page 141, "that the purpose of the picketing 'was to compel the [shipowner] to re-employ' the striking members of the crew for a shorter term and at more favorable wage rates and conditions than those agreed upon in the articles." In holding that the National Labor Relations Board did not have jurisdiction of this dispute, the Supreme Court said (page 142): "It should be noted at the outset that the dispute from which these actions sprang arose on a foreign vessel. It was between a foreign employer and a foreign crew operating under an agreement made abroad under the laws of another nation. *The only American connection was that the controversy erupted while the ship was transiently in a United States port and American labor unions participated in its picketing.*" (Emphasis supplied.)

The facts of the instant case, as we have hereinbefore recited them, reveal many and vital American connections involved in the controversy and not merely that it "erupted while the ship was transiently in a United States port and American labor unions participated in its picketing." The case of *Marine Cooks & Stewards, AFL, v. Panama Steamship Co., Ltd.*, 362 U. S. 365 (1960), presents a factual situation much more analogous to the present than does the *Benz* case.

In the *Marine Cooks* case, supra, the owner, the time charterer and the master of a Liberian registered vessel brought suit in a United States District Court against Marine Cooks & Stewards, AFL, inter alia, asking that the union and its members be enjoined from picketing the ship in American waters and from threatening to picket shore consignees of the ship's cargo should they accept delivery thereof. The Supreme Court stated the facts as follows

(pp. 367-68): "The S. S. NIKOLOS is owned by a Liberian corporation, was time-chartered for this trip by another Liberian corporation, and all members of its crew were aliens working under employment contracts made outside this country. There was no labor dispute between the ship's employees and the ship. The NIKOLOS picked up a cargo of salt in Mexico and carried it to the harbor of the port of Tacoma, Washington, for delivery to an American consignee there. After the ship entered the Tacoma harbor it was met by the [American] union's boat which began to circle around the NIKOLOS displaying signs marked 'PICKET BOAT.' Later an additional sign was put on the boat reading: 'AFL-CIO seamen protest loss of their livelihood to foreign flagships with substandard wages or substandard conditions.' The union threatened to extend its picketing to the consignee of the salt should an attempt be made to berth and unload that cargo. Although the picketing was peaceful and there was no fraud, the result was that the ship could not deliver its cargo."

The District Court issued a temporary injunction, which was affirmed by the United States Court of Appeals for the Ninth Circuit, in reliance almost entirely upon *Benz v. Compania Naviera Hidalgo*, supra. The Supreme Court reversed and held that the Norris-LaGuardia Act [1] deprived the District Court of jurisdiction to issue the injunction under the circumstances shown, saying (page 370): "It is difficult to see how this controversy could be thought to spring from anything except one 'concerning terms or conditions of employment,' and hence a labor dispute within the meaning of the Norris-LaGuardia Act. The protest stated by the pickets concerned 'substandard wages or substandard conditions.' The controversy does involve, as the Act requires, 'persons who are engaged in the same industry, trade, craft, or occupation.' And it is immaterial under the Act that the unions and the ship and the consignees did not

1. Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. A., § 101 et seq.

'stand in the proximate relation of employer and employee.' This case clearly does grow out of a labor dispute within the meaning of the Norris-LaGuardia Act." (footnotes omitted)

The National Labor Relations Act defines "labor dispute" as follows: "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."[2]

The definition of labor dispute in the National Labor Relations Act is identical with the definition of labor dispute in the Norris-LaGuardia Act,[3] except that the latter Act does not include the word "tenure" and uses the conjunctive phrase, "whether or not", instead of the more simple "whether." It follows, therefore, that if the facts of a case constitute a labor dispute within the meaning of the Norris-LaGuardia Act, they also constitute a labor dispute within the meaning of the National Labor Relations Act. Because the facts in the instant case are in all material respects similar to the facts in *Marine Cooks & Stewards, AFL, v. Panama Steamship Co., Ltd.*, supra, it necessarily follows that this case involves a labor dispute within the meaning of the National Labor Relations Act.

In the *Marine Cooks & Stewards* case, the Supreme Court distinguished the *Benz* case as follows in footnote 12 at page 371: "Unlike the situation in the *Benz* case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for

2. Act of July 5, 1935, c. 372, Section 2(9), 49 Stat. 449, as amended, 29 U. S. C. A. § 152(9).

3. Section 13(c), 29 U. S. C. A. § 113(c).

themselves in this country. They were picketing on their own behalf, not on behalf of the foreign employees as in *Benz. Though the employer here was foreign, the dispute was domestic.*" (Emphasis supplied.)

On similar facts in the instant case, then, we have a labor dispute within the meaning of the National Labor Relations Act which is domestic. It is all the more domestic in view of the many American connections revealed by the evidence taken in the court below. Because the present case involves a domestic labor dispute which affects commerce between a foreign country and a State, the complained of activity of the defendants is arguably subject to Sections 7 or 8 of the National Labor Relations Act. The National Labor Relations Board, therefore, has exclusive primary jurisdiction of the dispute.

This conclusion is confirmed by the fact that in *Peninsular & Occidental S. S. Co.*, 42 LRRM 1113 (1958), decided subsequent to the *Benz* case, the National Labor Relations Board took jurisdiction of a representation proceeding involving two ships registered in Liberia, owned by one Liberian corporation and time chartered by another Liberian corporation. The Liberian corporation which owned the ships was wholly owned by an American corporation. The Board said, in its ruling, that "* * * the Florida and Southern Cross may not properly be considered for jurisdictional purposes as foreign vessels. To be sure, they are nominally owned by Liberian corporations which pay a tonnage tax upon the ships to the government of Liberia and are registered under the laws of that nation. However, the ships have never been in Liberian waters and are under the complete operational control of a domestic corporation." Neither should it make any difference whether a foreign registered ship is under the control of a domestic corporation or of individual United States citizens, as in the present case.

In *Eastern Shipping Corp.*, 44 LRRM 1571 (1959), which involved a foreign owned ship registered in Panama,

with a foreign crew, and with its home port in Panama, the National Labor Relations Board reversed the regional director's dismissal of a representation petition filed by the Seafarers International Union AFL-CIO. The regional director had relied upon the *Bene* case.

In *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d (2nd Cir., 1959), the United States Court of Appeals for the Second Circuit, in a Jones Act case where the injured seaman was a citizen of the British West Indies, affirmed a judgment against, significantly, the same shipowner as is involved in the instant case. The federal court did not hesitate to look behind the foreign flag which the shipowner raised in an attempt to shield itself from liability, saying that, "Although appellant contends otherwise, the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. Gerradin v. United Fruit Co., 2 Cir., 1932, 60 F. 2d 927, certiorari denied 287 U. S. 642, 53 S. Ct. 92, 77 L. Ed. 556; Carroll v. United States, 2 Cir., 1943, 133 F. 2d 690; Zielinski v. Empresa Hondurena de Vapores, D. C. S. D. N. Y. 1953, 113 F. Supp. 93; Torgersen v. Hutton, 2nd Dept. 1934, 243 App. Div. 31, 276 N. Y. S. 348, affirmed, 1935, 267 N. Y. 535, 196 N. E. 566, certiorari denied, 1935, 296 U. S. 602, 56 S. Ct. 118, 80 L. Ed. 426. This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag. See Lauritzen, 345 U. S. at page 587, 73 S. Ct. at page 930. In the case now before us appellant has taken the trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little difficulty in brushing all this aside when considering the application *vel non* of the Jones Act. Complicating the mechanics of evasive schemes cannot serve to make them more effective. What we now do is not to disregard the

corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act. See Zielinski v. Empresa Hondurena de Vapores, supra, 113 F. Supp. at page 95." (footnote omitted)

The appellants point out that it is the policy of the United States Government to recognize a vessel's foreign "flag of convenience." Since, however, this policy does not deter the federal courts from looking behind such flags in cases involving federal regulatory statutes like the Jones Act, for instance, it may reasonably be inferred that neither should it deter the National Labor Relations Board from looking behind such flags in cases involving the National Labor Relations Act. The above cited rulings of the National Labor Relations Board accord with this conclusion.

In our opinion, exclusive primary jurisdiction of the dispute involved in these appeals is in the National Labor Relations Board.

The orders of the court below, denying the plaintiffs' respective motions for preliminary injunctions in the several suits, are affirmed and the complaints dismissed at the appellants' costs.

Mr. Justice Bell will file a dissenting opinion.

Mr. Justice Benjamin R. Jones dissents.

DISSENTING OPINION OF JUSTICE BELL OF THE SUPREME COURT OF PENNSYLVANIA.

BELL, *J.*

There are two important questions involved: (1) has a State Court of Equity jurisdiction to enjoin the picketing and the interference with unloading and servicing of the Liberian Ship SS Ore Monarch; and (2) if so, should it do so? I would answer both questions in the affirmative. The highlights of the facts (which are set forth in the majority opinion in detail) are:

Navios Corporation, the Appellant in No. 147, is a *Liberian corporation* having its only office or place of business at Nassau, Bahamas, *British West Indies.* This corporation is in the business of transporting bulk commodities in worldwide service and for this purpose operates 37 chartered vessels of which the SS Ore Monarch, which is involved in these appeals, is one.

Universe Tankship, Inc., the Appellant in No. 148, is the owner of the Monarch which it charters to Navios Corporation. Universe owns and operates a fleet of ocean-going bulk cargo vessels in worldwide service. It is a foreign corporation which is *incorporated in Liberia,** with its principal office in Hamilton, Bermuda, British West Indies, *and has an existing labor agreement with the Global Seamen's Union.* This labor agreement was executed at *Port-of-Spain, Trinidad,* on January 6, 1960. The Articles of Agreement between Master and crew of the Monarch provide pertinently: "Between Master and Seamen in the *Merchant Service of Liberia.* . . . It is agreed that all of the rights of the parties hereto without limita-

* Universe Tankships, Inc., is wholly owned by Oceanic Tankships, S. A., a Panamanian corporation, which in turn is wholly owned by two individuals, both of whom are American citizens. Navios Corporation is a wholly owned subsidiary of the United States Steel Corporation.

tion shall be governed *by the Laws of the Republic of Liberia.* . . . Any disputes arising between the Master or owner and members of the crew regarding this agreement, *wages and/or working conditions* is to be settled by the proper competent representative of LIBERIA."

Plaintiffs' vessel the Monarch, was built in *Japan*, registered in *Liberia and flies the Liberian flag.* On this voyage it was carrying a load of Venezuelan ore from Puerto Ordaz, Venezuela, to the Fairless Works of the United States Steel Corporation at Morrisville, Pennsylvania.** Because of the limited depth of the Delaware River the Monarch docked at Philadelphia to unload a part of her cargo and consequently is temporarily in American waters. All of the Monarch's crew of 48 men are, with three exceptions, nationals and residents of foreign countries, and all except for the Master and Chief Engineer, *are members of the Global Seamen's Union. The Global Seamen's Union is an unincorporated association, registered* in the Cayman Islands, *British West Indies.*

The defendant Unions, i.e., four American national and/or international unions, waited at Pier 122 South, Philadelphia, for the arrival of the Monarch. Pickets carried in front of the entrance to the pier, signs bearing the legend "American Maritime Union Protests Unfair Labor Practices of Owners of the Ore Monarch" and "American Maritime Union Protests Substandard Wages and Working Conditions on the Ore Monarch." The Unions also caused a small boat carrying pickets with similar signs to cruise in the vicinity of the Monarch. They also caused the pickets to prevent, or attempt to prevent, the unloading of ore and the delivery of supplies and victuals to the Monarch. Even more important, two agents of the defendant, the International Longshoremen's Association, boarded the Monarch and ordered the members of its Local to cease working,

** Since this vessel was registered, she has made various voyages between South American ports and ports in the United Kingdom and Canada, as well as the United States.

which orders were promptly obeyed. Perhaps most important of all, the Unions induced three hatchmen to leave the boat and depart with them, thereby paralyzing the unloading. It is as clear as crystal that the aforesaid actions by defendants were taken for the obvious fourfold purpose (1) to induce the members of the Global Seamen's Union to break their Union contract and (2) to induce the Monarch's seamen to enter into a contract with one of the defendants in breach of their present Union contract and (3) to coerce the employers, i.e., the owner and/or the charterer of the Monarch to enter or induce the seamen to enter into a contract with one of the defendants and (4) to prevent the unloading and servicing of the Monarch until their purposes and objectives are accomplished: The Global Seamen's Union intervened as a party plaintiff and vigorously attacked the actions of the defendants and sought the same injunctive relief against the defendant Unions as was prayed for by Navios Corporation and Universe Tankships, Inc.

The lower Court refused an injunction and dismissed the complaint on the ground that the National Labor Relations Board had (primary) jurisdiction of this labor dispute and therefore the State Court lacked jurisdiction. This decision was today affirmed by this Court.

The National Labor Relations Act, as amended by the Labor Management Relations Act of 1947,* will be searched in vain for any language which would give the National Labor Relations Board jurisdiction under the aforesaid facts. The majority opinion is unable to quote or even point to any language of the Act in support of its interpretation. On the contrary, the purpose, the intent and the whole background of the Act is concerned with the industrial relationship between American workingmen and their employers—it was never intended to apply to foreign unions or to Union contracts made by foreigners with foreigners.

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* 61 Stat. 136, 29 U. S. C. § 141.

That the Labor Management Relations Act of 1947 does not apply to cases of this nature is demonstrated by *Benz et al. v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138 (1957). That case is directly in point ** and governs this case. In that case the owner of a foreign vessel (1) was granted an injunction against peaceful picketing by seamen and by three American Unions, and (2) damages were assessed against the Unions, including the three American Unions which were doing the peaceful picketing. Six months after the vessel sailed, the injunction orders were vacated and were ordered dismissed as moot and hence the appeal of the Unions only involved the right to and the amount of damages. The Supreme Court affirmed the judgment of the Federal District Court (which applied Oregon law) and, we repeat, had awarded damages to the foreign shipowner against the American Labor Unions which had been peacefully picketing the ship. In the course of its opinion the Supreme Court said (pages 139-147):

"The S. S. Riviera on September 3, 1952, sailed into harbor at Portland, Oregon, for repairs, to load a cargo of wheat, and to complete an insurance survey. It was owned by respondent, a Panamanian corporation, and sailed under a Liberian flag. The crew was made up entirely of nationals of countries other than the United States, principally German and British. They had agreed to serve on a voyage originating at Bremen, Germany, for a period of two years, or until the vessel returned to a European port. A British form of articles of agreement was opened at Bremen. The conditions prescribed by the British Maritime Board were incorporated into the agreement, including wages and hours of employment, all of which were specifically set out. . . .

"On or about September 9, 1952, the members of the crew went on strike on board the vessel and refused to obey

** This case was decided by the U. S. District Court under Oregon law which is like Pennsylvania law and contains different provisions from the Norris-LaGuardia Act and other Federal Acts.

the orders of the Master. They demanded that their term of service be reduced, their wages be increased, and more favorable conditions of employment be granted. . . . On September 15, 1952, they had designated the Sailors' Union of the Pacific as their collective bargaining representative. The striking crew or others acting for them continued the picketing from September 26, 1952, until they withdrew the picket line on October 13, 1952. The Sailors' Union of the Pacific began picketing the Riviera on October 14 and continued to do so until restrained by an injunction issued in an action for injunctive relief and damages filed against it and its principal representatives by the respondent. Two days later Local 90 of the National Organization of Masters, Mates and Pilots of America set up a picket line at the Riviera which was maintained until December 8, 1952. This picketing was stopped by a writ issued against that union and its representatives in the second action for injunction and damages filed by respondent and consolidated here. On December 10, 1952, another picket line was established at the vessel. It was maintained this time by the Atlantic and Gulf Coast District, S. I. U., until it too was enjoined on December 12 in a third action filed by the respondent in which the prayer likewise was for an injunction and damages. . . . All of the picketing was peaceful.

". . .

". . . The only American connection was that the controversy erupted while the ship was transiently in a United States port and American labor unions participated in its picketing.

"It is beyond question that a ship voluntarily entering the territorial limits of another country subjects itself to the laws and jurisdiction of that country. Wildenhus's Case, 120 U. S. 1 (1887). The exercise of that jurisdiction is not mandatory but discretionary. . . . It follows that if Congress had so chosen, it could have made the Act applicable to wage disputes arising on foreign vessels between

nationals of other countries when the vessel comes within our territorial waters. The question here therefore narrows to one of intent of the Congress as to the coverage of the Act.

"The parties point to nothing in the Act itself or its legislative history that indicates in any way that the Congress intended to bring such disputes within the coverage of the Act. . . .

"Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws. The whole background of the Act is concerned with industrial strife between American employers and employees. In fact, no discussion in either House of Congress has been called to our attention from the thousands of pages of legislative history that indicates in the least that Congress intended the coverage of the Act to extend to circumstances such as those posed here. It appears not to have even occurred to those sponsoring the bill. The Report made to the House by its Committee on Education and Labor . . ., stated that 'the bill herewith reported has been formulated as a bill of rights both for American workingmen and for their employers.' The report declares further that because of the inadequacies of legislation 'the American workingman has been deprived of his dignity as an individual,' and that it is the purpose of the bill to correct these inadequacies. (Emphasis added.) H. R. Rep. No. 245, 80th Cong., 1st Sess. 4. What was said inescapably describes the boundaries of the Act as including only the workingmen of our own country and its possessions.

". . .

". . . Soon thereafter several proposals were made in Congress designed to extend the coverage of the Seamen's Act so as to prohibit advancements made by foreign vessels in foreign ports. A storm of diplomatic protest resulted. Great Britain, Italy, Sweden, Norway, Denmark,

the Netherlands, Germany, and Canada all joined in vigorously denouncing the proposals. In each instance the bills died in Congress.

"And so here such a 'sweeping provision' as to foreign applicability was not specified in the Act. The seamen agreed in Germany to work on the foreign ship under British articles. We cannot read into the Labor Management Relations Act an intent to change the contractual provisions made by these parties. For us to run interference in such a delicate field of international relations *there must be present the affirmative intention of the Congress clearly expressed.* It alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain. We, therefore, conclude that any such appeal should be directed to the Congress rather than the Courts."

In addition to the controlling *Benz* case, are there any persuasive or controlling reasons to indicate whether Congress did or did not intend the National Labor Relations Board to have jurisdiction of questions and matters such as are herein involved? The answer is: Yes, there are two —practicalities and treaties.

This case is not just a question of whether one or more American unions can tie up the Ore Monarch which carries Venezuelan ore from Venezuela and flies the Liberian flag. This case reduced to its basic essentials, affects British, French, and all foreign ships and all foreign commerce—the sellers, the buyers, the owners, the charterers, the shippers, the consignees, the railroads, the trucking industry and all other carriers. As a necessary consequence, it likewise affects American and foreign unions and businesses and the Government of the United States. Most important of all, it *directly* affects (a) our treaties with other nations, and (b) international trade, which our Federal Government is attempting to expand, and (c) our friendship with other Countries.

From ancient times international trade has grown up like Topsy—first to promote prosperity and later to foster friendships throughout the world. In order to maintain and protect trade between nationals of different countries and later international trade from banditry and conflicting national or domestic or group interests, certain protecting principles gradually took form. This form probably first appeared in the law-merchant. The need for international understandings or agreements affecting trade on the waters of the deep became especially vital and necessary. Hence there gradually evolved the internationally recognized doctrine of freedom of the seas. This doctrine presented, from time to time, problems which were approached or decided differently by different Nations at different times to suit their particular interests at a particular time. If a variety of tests could be adopted with each Nation establishing or applying the test which it momentarily preferred, maritime trade would be stifled, if not paralyzed. Maritime and international trade could not and cannot wait until the stockholders or the holding companies or eventually the owner (as distinguished from the registered or record owner) can be ferreted out and/or determined by Court proceedings in one or in many Nations. Consequently Nations have sought a common sign which would be visible, and easily recognizable and understandable by everyone—the Flag. For these reasons the historic doctrine of the flag (of registry) has been internationally recognized for over a century: *Wildenhus' Case*, 120 U. S. 1; *United States v. Flores*, 289 U. S. 137; *Benz v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138; *Lauritzen v. Larsen*, 345 U. S. 571, 584; Article V of the Geneva Convention on the High Seas of 1958, which was ratified by the United States Senate on May 26, 1960; *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultive Organization*, I C. J. Reports 1960, page 150. In an opinion in connection therewith rendered on June 8, 1960, the International Court of Justice recognized that the registry and the flag of Li-

beria are entitled to the same national status which is accorded the registry and the flag of any other Nation. These are likewise the views of the Attorney General of the United States and of the Secretary of State of the United States and of the Secretary of Defense of the United States as presented to the National Labor Relations Board by the United States Intervener as Amicus Curiae in the very recent case of West India Fruit and Steamship Co., Inc., et al., and three unions.

Confronted with this historical background * and with the knowledge which every Congressman undoubtedly possesses—namely, that unless immediate and permanent relief were granted in this class of case, irreparable damage and disastrous international repercussions were inevitable—it is inconceivable to me, as it has been to the Attorney General and to the Secretary of State of the United States (see infra) that Congress intended to oust the historical jurisdiction of Courts of Equity in this maritime class of cases where damage is so obvious, so swift and so irreparable, and to vest jurisdiction as if it were a mere domestic matter or a domestic labor dispute in the tortoiselike processes of the National Labor Relations Board.**

The majority in order to find jurisdiction only in the National Labor Relations Board attempt to pierce the corporate veil of all the holding companies and find that the

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* The enormous damage to plaintiffs and interveners which is mounting daily has necessitated this as well as the pertinent principles and authorities to be presented in capsule form.

** My sympathies are naturally entirely with American workers such as are represented by the defendant Unions, because they have become unemployed or are threatened with unemployment and distress by our National policy of more and more billions for foreign aid. For years this foreign aid was both wise and necessary, but many non-communist Countries have, with the help of our enormous financial non-military aid, recovered to such an extent that they are now flooding our Country with cheaply made foreign goods and creating vast unemployment. However, that policy is a matter for Congress and the President of the United States and not for Labor Unions, or Labor Relations Boards, or Courts.

vessel, by virtue of the ultimate stock ownership, is owned by American citizens. In the first place, for reasons hereinabove set forth, this is irrelevant—in these cases they cannot tear the flag from the masthead. In the next place, it would avail them nothing because of our treaty with Liberia.

Article VI, Clause 2, of the Constitution of the United States proclaims that "all Treaties made . . . under the Authority of the United States, shall be the Supreme Law of the Land and the Judges in every State shall be bound thereby."

The nationality of the Ore Monarch is *Liberian*, and under the applicable treaty and the Constitution of the United States, as well as settled principles of International and Maritime Law, she must be treated as such. Article XV of the Treaty of Friendship, Commerce and Navigation of August 8, 1938* between the United States and the Republic of Liberia provides:

"Merchant vessels and other privately owned vessels *under the flag*** of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, *both within the territorial waters of the other* High Contracting Party and on the high seas, *be deemed to be the vessels of the Party whose flag is flown.*"

As the Supreme Court of the United States stated in *Lauritzen v. Larsen*, 345 U. S. (supra), page 584 (1953):

". . . the most venerable and universal rule of maritime law . . . is that which gives cardinal importance to

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* 54 Stat. 1739 (1941), TIAS No. 956. This same or a similar provision is also found in the Treaties of Friendship, Commerce and Navigation which the United States has entered into with the Federal Republic of Germany, 7 UST 1839, TIAS No. 3593 (October 29, 1954); Honduras, 45 Stat. 2618 (1929), TIAS No. 764 (December 7, 1927); Iran, 8 UST 2063, TIAS No. 2863 (April 2, 1953); Japan, 4 UST 2063, TIAS No. 2863 (April 2, 1953); The Netherlands, 8 UST 2043, TIAS No. 3942 (March 27, 1956); and Nicaragua, 9 UST 449, TIAS No. 4024 (January 21, 1956).

** Italics throughout, ours.

the law of the flag. Each state under International Law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. *The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registered state.*"

This principle was recognized long ago in *Wildenhus' Case,* 120 U. S. 1 (1887), and followed in *United States v. Flores,* 289 U. S. 137 (1933). In addition, Article 5 of the Geneva Convention on the High Seas of 1958 (which was ratified by the United States Senate on May 26, 1960) provides pertinently:

"1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. *Ships have the nationality of the State whose flag they are entitled to fly.*

. . .

"2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect."

And, in an advisory opinion, the International Court of Justice recognized that the registry and flag of Liberia are entitled to the same national status accorded the registry and flag of any other nation: *Constitution of the Maritime Safety Committee of the Intergovernmental Maritime Consultive Organization,* ICJ Reports 1960, page 150.

As the Attorney General of the United States stated in his brief as Amicus Curiae before the National Labor Relations Board, in the matter of *West India Fruit and Steamship Company, Inc.,* supra:

"Another consideration compelling the recognition of the international law principle that the nationality of a ship is determined by the flag she flies is the fact that the principle is incorporated in various treaties of the United States

with other nations. Honduras and Liberia, nations whose flags are flown on ships involved in these proceedings, have treaties with the United States, providing in essence that vessels flying their flags and carrying papers as required by their laws in proof of nationality must be recognized by the United States as ships of the flag-flying country within the territorial waters of this country. These provisions, or comparable ones, are common to a number of Treaties of Friendship, Commerce and Navigation which the United States has entered into with other friendly foreign nations, such as The Netherlands, Nicaragua, Iran, the Federal Republic of Germany, and Japan.

". . .

"A refusal to treat merchant vessels flying the flag of Liberia and Honduras as vessels of those nations would be in direct conflict with our treaty obligations and would, as the Under Secretary of State has pointed out in his letter of October 27, 1960, to the Attorney General, create serious difficulties in our foreign relations not only with nations signatory to these treaties but with other nations, such as Panama, which would be entitled to interpret a refusal to recognize the flag of the ship as a violation of the rules of international law upon which there had been mutual reliance."

"The flag rule of international law accords all nations equal status without discrimination and the flags of small nations such as Honduras, Liberia and Panama are entitled to the same recognition as those of the flags of such great maritime nations as the United States, Britain, France, and Germany. . . .

"A general application of the Taft-Hartley Act to ships flying the flags of Liberia, Honduras, and Panama would have far-reaching effects upon the internal economy of the ships, would displace the labor-relations policies of the flag states as well as labor unions organized under their laws

and would prejudice the foreign relations of the United States with these independent nations. In such event the flag nations involved would consider assumption of jurisdiction by the Board to be an unwarranted intrusion into their own domestic matters.

"It is difficult to conceive of a greater prejudice to maritime commerce and the foreign relations of the United States than attempts of administrative agencies of the United States or its courts to distinguish between nationality flags upon the basis of the internal legislation of the flag state fixing the conditions for the grant of its flag or other comparable factors."

The Secretary of Defense by letter dated October 26, 1960 also requested the Attorney General to intervene in the cases pending before the National Labor Relations Board and point out to the Board the vital necessity of having "ships flying the flags of Liberia, Panama and Honduras . . . available for United States usage . . . during periods of national emergency" in accordance with agreements made by the United States with those countries. The Secretary of Defense said, inter alia: "In my considered judgment the subjection of these foreign flag vessels to the jurisdiction of the United States Labor Management Act would very likely have the effect of driving them to registration under the flags of other nations . . . and under such registries these ships would no longer be available for the emergency use of the United States . . . with consequent loss of control over a vital resource by the United States in the event of a national emergency."

An analysis of *Marine Cooks et al. v. Panama Steamship Co.* and *San Diego Building Trades Council v. Garmon* and the other decisions of the Supreme Court upon which the majority relies will demonstrate that they are, because of their facts and/or a different Congressional Act, clearly distinguishable.

It is clear that the National Labor Relations Board does not have jurisdiction and that the Court of Common Pleas of Philadelphia (sitting in Equity) where the complaint was filed, does have jurisdiction. It is even clearer that the lower Court should enter the injunction prayed for. Even if the picketing in this case, in spite of taking the three hatchmen off the boat, is considered peaceful, the appellees (labor unions) continue under the delusion that *all peaceful* picketing is lawful. Of course that is not the law. It is well settled that a State Court may enjoin peaceful picketing if it is conducted in an unlawful manner, or if one of its objects is unlawful even though it is not the sole object: *International Brotherhood of Teamsters Union, Local 309 v. Hanke*, 339 U. S. 470; *Building Service Employees International Union, Local 262 v. Gazzam*, 339 U. S. 532; *Wilbank v. Chester & Delaware Counties Bartenders, Hotel & Restaurant Employees Union*, 360 Pa. 48, 50, 60 A. 2d 21, 22; *Phillips v. United Brotherhood of Carpenters and Joiners of America*, 362 Pa. 78, 82, 66 A. 2d 227, 228; *Wortex Mills, Inc. v. Textile Workers Union of America, C. I. O.*, 369 Pa. 359, 369, 85 A. 2d 851, 857; *Sansom House Enterprises, Inc. v. Waiters & Waitresses Union, Local 301, A. F. L.*, 382 Pa. 476, 480, 115 A. 2d 746, 748; *Anchorage, Inc. v. Waiters & Waitresses Union*, 383 Pa. 547, 119 A. 2d 199; *Garner v. Teamsters, Chauffeurs & Helpers, Local Union No. 776*, 373 Pa. 19, 22, 94 A. 2d 893, 895; *Baderak v. Building & Construction Trades Council*, 380 Pa. 477, 482, 112 A. 2d 170, 173; *West Penn Township School District v. International Brotherhood of Electrical Workers*, 396 Pa. 408, 145 A. 2d 258; *Northampton Area Joint School Authority v. Building & Construction Trades Council*, 396 Pa. 565, 152 A. 2d 688; Act of June 2, 1937, P. L. 1198, as amended by the Act of June 9, 1939, P. L. 302, § 4(a), (b).

It is clear that defendants have violated (a) the fundamental law of the Land as well as (b) the law of Pennsylvania, and (c) that their unlawful objects, conduct and activities have caused and are causing plaintiffs and buyers

and carriers irreparable damage * and their conduct is in violation of our international treaties and will likely injure our friendly relationships with many other countries. In my judgment plaintiffs have made out a case clearly requiring the issuance of an appropriate injunction.

For each and all of the aforesaid reasons, I dissent.

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* During the three weeks following October 21, 1960, twelve vessels flying a foreign flag have already been diverted from the Port of Philadelphia, resulting in a loss of approximately 405,000 tons of ore to this Port. The loss to the Port, to the shippers, the buyers, the railroads, and other carriers has not been estimated, but is obviously tremendous.

APPENDIX B.

IN THE COURT OF COMMON PLEAS No. 1.

NAVIOS CORPORATION, *Plaintiff*, GLOBAL SEAMEN'S UNION, *Intervening Plaintiff*, *v.* NATIONAL MARITIME UNION OF AMERICA, ET AL., *Defendants.*	September Term, 1960. No. 2065. In Equity.
UNIVERSE TANKSHIPS, INC., *Plaintiff*, GLOBAL SEAMEN'S UNION, *Intervening Plaintiff*, *v.* NATIONAL MARITIME UNION OF AMERICA, *Defendants.*	(Transferred from C. P. 4) September Term, 1960. No. 2068. In Equity.

ADJUDICATION OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA.

November 7th, 1960.

GRIFFITHS, *Chancellor.*

These cases came on for hearing on an application for a preliminary injunction on Friday, October 28, 1960. Dur-

ing the course of the hearing, which continued on Monday, October 31st, and on November 1st and 2nd, the parties agreed that the hearing be considered a final one, in order to expedite the litigation. The Court also allowed the application of the Global Seamen's Union to intervene as a party plaintiff.

Defendants have filed Preliminary Objections to the Complaint, which are herein discussed.

The Complaints aver that the time charterer, Navios, and Universe, owner, of the S. S. Ore Monarch, are grieved by actions of defendants in picketing at Pier 122 South. The Complaints also seek damages for such picketing.

Answers have been filed to these Complaints, substantially denying the claims. No answer has been filed to the Complaint of the Intervening Plaintiff, but it has been agreed, for purposes of the trial and this adjudication, that such answer, if filed, would substantially deny the claims of such Complaint.

Without further discussion of the facts, which are somewhat detailed, and which will be elucidated in the Findings, based on the pleadings and proofs, we make the following

FINDINGS OF FACT.

The Court affirms the following Requests for Findings of Fact as submitted by Navios:

1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

11. Defendant, International Maritime Workers' Union, was formed to serve as an instrument or means of cooperation with International Transport Workers' Federation, a worldwide association of trade unions, of which National Maritime Union and Seafarers' International Union are members, to resist the trend toward registration of ships owned or controlled by American citizens under Liberian and certain other foreign flags (N. T. 255-283, 339-340).

The Court affirms the following Requests for Findings of Fact as submitted by Navios:

13, 14, 18, 19, 21, 22, 24, 25 and 26.

27. When the signalmen stopped working and left the SS Ore Monarch, the crane operators, whom they had been directing, also stopped working and unloading of the vessel ceased and has not been resumed (N. T. 123-124).

The Court affirms Request for Finding of Fact No. 1 as submitted by Universe.

(The rest of the Requests of Universe are substantially the same as those of Navios.)

The Court affirms Request for Finding of Fact No. 1 as submitted by Global.

The Court affirms the following Requests for Findings of Fact as submitted by the defendants:

1. (except (a) thereof), 2, 3, 4, 5, 6, 9, 10, 13 and 14.

In addition the Court makes the following Finding of Fact:

A. The general subject matter of this dispute has been submitted to N. L. R. B. in another case by I. M. W. U., one of the Defendants herein, against Universe, one of the Plaintiffs herein.

The above referred to Requests for Findings of Fact which the Court has affirmed are adopted by the Court as its Findings of Fact and incorporated herein by reference. Ordinarily they would be separately written into the Adjudication but because of the lengthy Requests and a desire of the parties and counsel that the Court expedite its Adjudication (which we are doing by filing the same within two days after briefs and Requests were submitted to us) we are following this unusual method.

DISCUSSION.

Under recent law the preemption doctrine has undergone some radical changes. State power in many fields has been, in effect, cancelled. This now seems to be true whether State law is consistent or inconsistent with National law. The supremacy clause of the United States Constitution (Art. VI, Sec. 2) and its necessary implications requiring a conflict or State exclusion before the Sovereign State is deprived of jurisdiction, had been whittled away to practically nugatory effect. We must recognize and follow these changes in the law, as we are mandated to do under the doctrine of judicial subordination. In the light of the above comment we proceed with an analysis of the applicable law.

Marine Cooks & Stewards, AFL, etc. v. Panama Steamship Company, Ltd., 362 U. S. 365; 80 S. Ct. 779, decided April 18, 1960, has facts practically identical with the facts in the case at bar. There Mr. Justice Black stated the facts as follows (page 782):

> "The S. S. Nikolos is owned by a Liberian corporation, was time-chartered for this trip by another Liberian corporation, and all members of its crew were aliens working under employment contracts made outside this country. There was no labor dispute between the ship's employees and the ship . . . After the ship entered the Tacoma harbor it was met by the union's boat which began to circle around the Nikolos displaying signs marked 'PICKET BOAT.' Later an additional sign was put on the boat reading: 'AFL-CIO seamen protest loss of their livelihood to foreign flag ships with sub-standard wages or sub-standard conditions.''

In the *Marine Cooks Case*, the Norris-LaGuardia Act was applied, which, of course, is applicable in federal and not state courts. Nevertheless the factual issues there

presented and answered are just as valid here. Of these issues, Mr. Justice Black stated:

> "It is difficult to see how this controversy could be thought to spring from anything except one 'concerning terms or conditions of employment,' and hence a labor dispute within the meaning of the Norris-LaGuardia Act. The protest stated by the pickets concerned 'sub-standard wages or sub-standard conditions.' The controversy does involve, as the Act requires, 'persons who are engaged in the same industry, trade, craft or occupation.' And it is immaterial under the Act that the unions and the ship and the consignees did not 'stand in a proximate relation of employer and employee.' This case clearly does grow out of a labor dispute within the meaning of the Norris-LaGuardia Act."

The term "labor dispute" has the same definition in the *Norris-LaGuardia Act* as in the *Taft-Hartley Act* or *Labor Management Relations Act of 1947* (29 U. S. C. A., Sec. 113 and Sec. 152, respectively). It is defined as follows:

> "The term 'labor dispute' includes any controversy *concerning terms or conditions of employment,* or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, *regardless of whether or not the disputants stand in the proximate relation of employer and employee.*" (Emphasis supplied.)

If the *Marine Cooks Case* was a "labor dispute" surely so is the case at bar.

The case now before us concerns the preemption by federal law under the *Labor Management Relations Act of 1947,* as amended, hereinafter sometimes referred to as the *Act of 1947,* as amended.

Before we get to this consideration, however, we are faced with the contention of the Plaintiffs that *Benz v. Compania Naviera Hidalgo*, 353 U. S. 138, 77 S. Ct. 699 (1957) controls. While it is true that *Benz* was concerned with the jurisdiction of the state court, the same question as is now before us, the facts of *Benz* were different. As stated in *Marine Cooks Case* (page 783):

> "The question in the Benz Case was whether the Labor Management Relations Act of 1947—governed the internal labor relations of a foreign ship and its foreign workers under contracts made abroad while that ship happened temporarily to be in American waters."

And again, in footnote 12, on page 784:

> "Unlike the situation in the Benz case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for themselves in this country. They were picketing on their own behalf, not on the behalf of the foreign employees as in Benz. Though the employer here was foreign, the dispute was domestic."

In the case at bar the picketing was not, as in *Benz*, as an act of sympathy for a strike of foreign seamen abroad [*sic*], but was in fact as in *Marine Cooks*, because of interest in preserving job opportunities for themselves in this country. In both *Benz* and *Marine Cooks* the employer was foreign, but in *Marine Cooks* the Supreme Court said the dispute was domestic. Under almost identical facts with *Marine Cooks* the case at bar is certainly domestic.

The language in *Marine Cooks*, on page 784 is, therefore, certainly applicable here:

"Congress passed the Norris-LaGuardia Act to curtail and regulate the jurisdiction of courts, not, as they passed the Taft-Hartley Act, to regulate the conduct of people engaged in labor disputes. As we pointed out in the Benz case, the ship that voluntarily enters the territorial limits of this country subjects itself to our laws and jurisdiction as they exist."

The Navios voluntarily entered our territorial limits and has subjected itself to our laws and jurisdiction as they exist.

We come, then, to the question whether the federal field has preempted this dispute. If federal law has excluded state jurisdiction, the case would be cognizable under the Act of 1947, as amended, and a temporary injunction could only issue out of the U. S. District Court and then only upon application of the N. L. R. B., *29 U. S. C. A. 160(j)*.

On April 20, 1959, the Supreme Court of the United States handed down a sweeping decision in the *Second Garmon Case*, i.e., *San Diego Building Trades Council et al. v. Garmon et al.*, 359 U. S. 236. There the state court was prohibited from awarding damages for peaceful picketing which violated state law. The Court quoted (pp. 242, 243) from *Garner v. Teamsters Union*, 346 U. S. 485, 490-491, as follows:

"Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substan-

tive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes towards labor controversies . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rule of substantive law . . . Garner v. Teamsters Union, 346 U. S. 485, 490-491."

The Court then proceeded to state (page 245):

"It is not for us to decide whether the National Labor Relations Board would have, or should have, decided these questions in the same manner. When an activity is arguably subject to Sec. 7 or Sec. 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."

The *Second Garmon Case*, therefore, has given as a test of federal jurisdiction, the "arguably subject" yardstick. No longer are the necessary implications of the constitutional supremacy law applicable; nor need there be a Congressional Act excluding state jurisdiction. Duplication of federal law, or consistent or inconsistent legislation cases are no longer the standard, so long as this case is the law, with its "arguably subject" test.

After the *Second Garmon Case* of April 20, 1959, the *Landrum-Griffin Law*, with its preemption section, (701(a)), became effective, on September 14, 1959, Pub. L. 86-257 Title VII, Sec. 701(a), 73 Stat. 541. This section provides as follows (29 U. S. C. A. Sec. 164(c), 1959 Supp.):

"(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class

or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided,* that the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

"(2) Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes *over which the Board declines,* pursuant to paragraph (1) of this subsection, to assert jurisdiction." (Emphasis ours.)

Thus we have Congressional endorsement of preemption, and after the *Second Garmon Case.* This Law is tantamount to acceptance by Congress of the "arguably subject" doctrine. Now, before a State Court can take jurisdiction of a peaceful picketing case which is not "a merely peripheral concern of the Labor Management Relations Act" (*Garmon,* p. 243), the N. L. R. B. must first have declined jurisdiction.

Significantly, the general subject matter of this dispute has been submitted to the N. L. R. B. in another case filed April 6, 1960, against Universe by the I. M. W. U. Further, in Case Nos. 15-CA-1454, 12-CA-255, 12-RC-415 and 2-RC-10379, before the N. L. R. B. involving this general subject matter, the Attorney General of the United States has asked leave to intervene and Plaintiffs have cited this action in support of their case now before us. These case incidents lend strength to the cogency of the preemption section of the *Landrum-Griffin Law* as applied to the present case.

As far as this piece of present litigation is concerned, the significance of "flags of necessity", or "of convenience" or "runaway ships" is a matter for the N. L. R. B. and the federal courts. *Afran Transportation Co. v. N. M. U.*, 169 Fed. Supp. 416 (S. D. N. Y. 1958) denied an injunction in such a situation involving American owners of foreign companies; whereas *Fianza Cia Nav. S. A. v. Benz*, 178 Fed. Supp. 243, 246 (D. Ore. 1959), did not follow *Afran*, where there was no evidence of American ownership of foreign vessels. This might be a line of analysis the federal courts will follow.

We, therefore, concluded jurisdiction in this case lies exclusively within the federal system of law, unless the N. L. R. B. declines jurisdiction, a fact which has not taken place. We have, therefore, not acted on Requests for Findings of Fact and Conclusions of Law which are not relevant to this issue. Nor have we considered other arguments advanced by counsel for any of the parties, as such was not necessary to a decision in the case.

The Court makes the following

CONCLUSIONS OF LAW.

1. The picketing presently engaged in is peaceful, unaccompanied by violence of any nature.

2. The dispute between Plaintiffs and Defendants is a labor dispute of a domestic nature.

3. Exclusive jurisdiction of the subject matter of the dispute is vested in the National Labor Relations Board.

4. This Court has no jurisdiction to consider the merits of the controversy.

Wherefore, we enter the following

ORDERS.

1. The request for a preliminary injunction is dismissed.

2. Preliminary objection No. 1 of the Defendants is dismissed as moot, at this time, it having been disposed of in this Adjudication and the Decree Nisi.

3. The Court reserves decision on Preliminary Objections Nos. 2 and 3 of the Defendants, pending final disposition of the Decree Nisi herein entered.

DECREE NISI.

And now, this 7th day of November, 1960, the Complaints of Navios Corporation and Universe Tankships, Inc., Plaintiffs, and of Global Seamen's Union, intervening plaintiff, are dismissed.

The Prothonotary shall give notice hereof to the parties or their counsel and unless exceptions are filed within twenty (20) days from the date hereof the Prothonotary, upon praecipe of any party, shall enter this decree nisi as the final decree.

By THE COURT

/s/ GRIFFITHS,
Chancellor.

APPENDIX C.

SUPPLEMENTAL ADJUDICATION OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA.

GRIFFITHS, *Chancellor* November 28, 1960

Inasmuch as an appeal has been taken in the above cases to the Supreme Court of Pennsylvania, we consider it advisable at this time to state why we did not follow the majority in the case of *Incres Steamship Company, Ltd. v. International Maritime Workers Union,* et al, Supreme Court, Appellate Division, First Dept., June 1960, No. 2750 (New York).

In the first place, the *Incres* decision holds very closely to its own facts. It goes out of its way to state this on page 4 of the typewritten opinion, as follows:

> "Quite a different case would be presented if the ships were used exclusively or largely on inland waterways, or for that matter, if one or more of the other factors mentioned were changed. This does not mean that a change in any of these factors would require a contrary result. It is that there would then be a doubtful question of applicability of the federal labor statute and the rule in *Garner v. Teamsters Union* (346 U. S. 485) and *San Diego Unions v. Garmon* (359 U. S. 236) would apply. (See, *Dooley v. Anton,* N. Y. 2d .)"

In the *Navios* case at least one major factor is different than in the *Incres* case: In *Incres* the plaintiff corporation was not American, but actually owned and controlled by Italian nationals; in *Navios* plaintiff corporation is owned and controlled by American interests. This is the same distinction between the *Afran* and *Fianza* decisions, cited on page 9 of our Adjudication.

Just as *Incres* states, if any factors were changed "there would then be a doubtful question of applicability of the federal labor statute and the rule in *Garner v. Teamsters*

Union—and *San Diego Union v. Garmon* (the second *Garmon* case) would apply . . .", so in our Adjudication of November 7, 1960, we found a major factor different and applied the rule of these two cases.

In the second place, *Incres* accepts the *Benz* decision as controlling. Here the majority in *Incres* misinterpreted *Benz* and the *Marine Cooks* decisions. The majority failed to appreciate that *Benz* was a situation where American seamen struck in sympathy with the strike of foreign seamen abroad (held to be an interference with the internal economy of the ship and enjoinable) and in *Incres* as in *Navios* and *Marine Cooks*, the situation was where American seamen struck out of interest in preserving job opportunities for themselves in this country (held in *Marine Cooks* to be a domestic dispute and not enjoinable). It is this failure in properly interpreting the facts of the *Benz* and *Marine Cooks* decisions that is error in the *Incres* holding.

The *Incres* decision, no doubt, is now pending in the Court of Appeals of New York. The case decided by the Appellate Division, to which we refer, was heard by five justices, two of whom dissented. We did not have the benefit of the dissenting opinion, written by Presiding Justice Botein, in which Justice Stevens concurred.

By THE COURT:

/s/ GRIFFITHS,
Chancellor.

(The above was written on Saturday, November 26, and transcribed on Monday, November 28, 1960.)

APPENDIX D.

CONSTITUTION OF THE UNITED STATES.

ARTICLE VI, CLAUSE 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION WITH THE REPUBLIC OF LIBERIA

AUGUST 8, 1938, 54 STAT. 1739

ARTICLE XV, 54 STAT. 1745

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be vessels of the Party whose flag is flown.

LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

Section 7, 61 Stat. 141 (1948), 29 U. S. C. § 157

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain

from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) of this title.

Section 8(b)(4), 73 Stat. 542 (1960), 29 U. S. C. § 158(b)(4)

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of this title: Provided, That nothing contained in this clause (B) shall be construed to make unlawful,

where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.